



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0069]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption from Charles Machine Works, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant Charles Machine Works, Inc.'s (CMW) application for a limited 5-year exemption to allow the use of gravity or syphon-fed fuel systems for auxiliary equipment installed on or used in connection with commercial motor vehicles (CMV). While the Federal Motor Carrier Safety Regulations (FMCSR) currently prohibit the use of fuel systems that supply fuel directly to the carburetor or injector by gravity or syphon feed, the Agency has determined that granting the exemption to allow the use of gravity or syphon-fed fuel systems for auxiliary equipment that operates only when the CMV is stationary would likely maintain a level of safety that is equivalent to, or greater than the level of safety provided by the regulation.

DATES: This exemption is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ending September 16, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-0676,

Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application

and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

CMW's Application for Exemption

CMW applied for an exemption from 49 CFR 393.65(d) to allow the use of gravity or syphon-fed fuel systems for auxiliary equipment installed on or used in connection with CMVs that operate only when the CMV is not operating on the highway. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.65 of the FMCSRs prescribes certain requirements that are applicable to all CMV fuel systems. The requirements in this section apply to systems for containing and supplying fuel for the operation of (1) motor vehicles or (2) auxiliary equipment installed on, or used in connection with, motor vehicles. Section 393.65(d) prohibits a fuel system from supplying fuel by gravity or syphon feed directly to the carburetor or injector.

CMW is a family of companies focused on the installation, maintenance, rehabilitation, and replacement of underground pipe and cable for the telecom, oil, electricity, gas, water, and wastewater industries. Its family of companies includes Ditch Witch®, Subsite® Electronics, DW/TXS®, HammerHead®, Trencor® and MTI® Equipment. CMW designs, manufactures and sells a range of products to cover the full life-cycle of underground pipe and cable, including horizontal directional drills, walk and

ride trenchers, utility loaders, vacuum excavators, asset locators, pipe rehabilitation solutions, and after-market tools.

Some of the equipment designed and manufactured by CMW utilizes small, commercially available internal combustion engines to power auxiliary equipment that is permanently mounted on a CMV. CMW states that while auxiliary equipment that is permanently mounted to CMVs is considered part of the CMV and subject to the requirements of 49 CFR 393.65(d), it “has identified that currently there is uneven roadside enforcement with regard to the use of gravity fed fuel tanks on auxiliary equipment installed on or used in connection with commercial motor vehicles.”

In support of its application, CMW stated:

Most small commercially available internal combustion engines used on auxiliary equipment are equipped from the factory with gravity fed fuel tanks attached to the engine...The cost of modifying these small internal combustion engines to remove the fuel tank from the engine and to re-engineer the fuel delivery system to use a fuel pump to pump fuel from the now removed fuel tank to the internal combustion engine requires electrical wiring to be run from the commercial motor vehicle to operate the fuel pump. Manufacturers who have gone to this additional expense, question the reasoning of removing the fuel tank from above the engine and placing it beside the engine and equipping the system with a fuel pump to transfer fuel from the tank to the engine. Since the auxiliary equipment only operates when the CMV is not operating on the highway there does not seem to be any legitimate safety reason for this requirement. A review of previous Federal Register notices does not describe why this requirement was added for fuel systems for auxiliary equipment on commercial motor vehicles, when this equipment is not operating while the CMV is operating on the highway.

Comments

FMCSA published a notice of the application in the **Federal Register** on March 28, 2019, and asked for public comment (84 FR 11862). The Agency received comments from the Truck Trailer Manufacturers Association (TTMA) and two individuals.

TTMA commented in support of the application, and noted that the relief requested by CMW is similar to the amendment requested by TTMA in its December 2018 petition for rulemaking to the Agency on the same issue. Specifically, TTMA has petitioned FMCSA to amend the FMCSRs to exempt “fuel tanks for auxiliary equipment designed to be operated when the vehicle is not in motion and having a capacity of 5 gallons or less of liquid fuel” from the prohibition against fuel systems using gravity or syphon feed in 49 CFR 393.65(d). One individual submitted comments in support of CMW’s application, and suggested that FMCSA “examine the language in Part 393.65 and narrow the equipment subject to Part 393.65(d) to systems other than those systems designed to utilize gravity feed or require a petcock be installed to shut off fuel in transit or prohibit the equipment from operating while the ‘motor vehicle’ is operating on the highways.” Another individual expressed concern that the auxiliary equipment will be operated while the vehicle is in motion, and that it would be very difficult for FMCSA to enforce a prohibition against such use. To address these concerns, the commenter suggested that the Agency consider instituting controls to ensure that auxiliary equipment is (1) inoperative while the CMV is in motion or (2) located such that the driver or operator cannot turn it on while the vehicle is in motion. The commenter recommended that additional data be collected before a decision is made to grant the exemption.

FMCSA Analysis

The motor carrier safety regulations pertaining to CMV fuel systems have prohibited the use of fuel systems that supply fuel directly to the carburetor or injector by gravity or syphon feed since at least the early 1950s when such regulations were administered by the Interstate Commerce Commission (ICC). In its comments to the

CMV application, TTMA stated “We believe that the prohibition against siphon or gravity feed was inserted to prevent a situation where fuel would continuously feed an engine on a drive vehicle that had caught fire.” At that time, the regulations for fuel systems and liquid fuel tanks were limited to those used specifically *for the propulsion of the motor vehicle*, and did not contemplate systems for containing and supplying fuel for the operation of auxiliary equipment installed on or used in connection with the motor vehicle.¹

On February 19, 1970, the Federal Highway Administration (FHWA), the predecessor to FMCSA, published a notice of proposed rulemaking (NPRM) proposing amendments to the regulations pertaining to CMV fuel systems to (1) apply additional provisions to diesel fuel tanks, (2) set somewhat more stringent requirements for liquid fuel tanks other than side-mounted liquid fuel tanks, (3) update the references to industry standards, and (4) rearrange the subpart for increased clarity (35 FR 3177). While retaining the prohibition against use of fuel systems that supply fuel directly to the carburetor or injector by gravity or syphon feed, the NPRM proposed to define “fuel tank” as “a tank installed on a motor vehicle to contain and supply fuel for its operation *or for the operation of auxiliary equipment*.” [Emphasis added.] There was no discussion in the NRPM regarding the proposal to extend the scope of the regulation beyond systems/tanks used for the propulsion of the CMV, and to include fuel tanks used for the operation of auxiliary equipment.

In a final rule published on August 14, 1971 (36 FR 15444), FHWA did not retain the proposed definition of “Fuel tank” that included the reference to “auxiliary

¹ See the ICC’s amendments to 49 CFR part 193, Parts and Accessories Necessary for Safe Operations, Subpart E – Fuel Systems, dated May 15, 1952 (17 FR 4438).

equipment,” but instead, adopted a new section in 49 CFR 393.65 regarding the applicability of the rules in Subpart E to all fuel systems. Specifically, the August 1971 rule adopted 49 CFR 393.65(a), “Application of the rules in this section,” as follows (which remains unchanged today): “The rules in this section apply to systems for containing and supplying fuel for the operation of motor vehicles or for the operation of auxiliary equipment installed on, or used in connection with, motor vehicles.” While there were 26 commenters to the February 1970 NPRM, there was no discussion in the August 1971 final rule regarding the rationale for extending the scope of the fuel system requirements to include systems/tanks used for the operation of auxiliary equipment installed on or used in connection with the CMV.

FMCSA is unable to confirm from the ICC rulemaking documents whether the prohibition of gravity or syphon-fed fuel systems was established (and has been maintained in the regulations since the 1950s) to eliminate/minimize the risk associated with the continuous supply of fuel to the engine of a vehicle that has caught fire, as stated by TTMA in its comments. However, the TTMA explanation is certainly reasonable and FMCSA believes that the regulatory prohibition against the use of such systems has been successful in mitigating the consequences of CMV vehicle fires. At the same time, FMCSA agrees with TTMA and a commenter that the risk of fires involving fuel from auxiliary equipment that is mounted to a CMV is remote because the auxiliary equipment is rarely, if ever, operated when the CMV is in motion. Instead, most auxiliary equipment that is permanently mounted to a CMV utilizing small, commercially available internal combustion engines (such as small pumps) is typically used to perform work-related functions at various jobsites when the CMV is no longer operating on the

highway. Additionally, the capacity of fuel tanks on auxiliary equipment that is mounted on CMVs is typically very small, generally not exceeding 5 gallons, which minimizes the consequences of fires due to fuel supplied via gravity or syphon-fed systems on such equipment.

As CMW notes in its application, if the exemption is not granted, CMVs with auxiliary equipment that use gravity or syphon-fed fuel systems need to be modified to (1) remove the gravity and syphon-fed fuel systems, (2) mount fuel tanks near the auxiliary equipment's internal combustion engine, and (3) install fuel pumps to deliver fuel to the auxiliary equipment in order to comply with 49 CFR 393.65(d). FMCSA agrees with CMW that the risk of fires from the use of gravity or syphon-fed fuel systems used on auxiliary equipment is minimal, especially given that the auxiliary equipment typically operates only when the CMV is not operating on the highway.

FMCSA acknowledges the concern of the commenter who noted that the auxiliary equipment may be operated while the vehicle is in motion, and that it would be very difficult for FMCSA to enforce a prohibition against such use. However, FMCSA is unaware of any situations in which motor carrier operations require the auxiliary equipment to operate while the vehicle is in motion. Instead, and as stated earlier, FMCSA believes that most auxiliary equipment that is permanently mounted to a CMV utilizing small, commercially available internal combustion engines (such as small pumps) is typically used to perform work-related functions at various jobsites and when the CMV is stationary and no longer operating on the highway.

FMCSA Decision

FMCSA has evaluated the CMW exemption application, and the comments received. Based on the discussion above, FMCSA believes that allowing the use of gravity or syphon-fed fuel systems for auxiliary equipment installed on or used in connection with CMVs that operate only when the CMV is not operating on the highway is likely to provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a 5-year period, beginning [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ending September 16, 2025. During the temporary exemption period, motor carriers will be allowed to use gravity or syphon fed fuel systems for auxiliary equipment installed on or used in connection with CMVs that operate only when the CMV is not operating on the highway.

The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) motor carriers operating CMVs fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers operating CMVs allowing the use of gravity or syphon fed fuel systems for auxiliary equipment installed on or used in connection with CMVs that operate only

when the CMV is not operating on the highway is not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to CMVs operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

James W. Deck,
Deputy Administrator.

[FR Doc. 2020-20440 Filed: 9/15/2020 8:45 am; Publication Date: 9/16/2020]